

U.S. DISTRICT COURT
FILED AT WHEELING, WV

MAY - 1 1997

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WV
NORTHERN DISTRICT OF WEST VIRGINIA OFFICE OF THE CLERK

UNITED STATES OF AMERICA,	:	CRIMINAL ACTION
Plaintiff,	:	NO. 1:96CR43-01
	:	
v.	:	
	:	
JAMES R. ROGERS,	:	
Defendant.	:	

**DEFENDANT'S MEMORANDUM IN SUPPORT OF
HIS MOTION FOR RELIEF FROM PREJUDICIAL JOINDER**

AND NOW, comes the defendant, JAMES R. ROGERS, by his attorney, GARY B. ZIMMERMAN, Esquire, and files the following Memorandum in support of his Motion for Severance:

1. The Government began an investigation of the Mountaineer Militia and Raymond Looker, a co-defendant herein, on or about June of 1995 and continued said investigation until October of 1996.

2. That investigation included intercepting approximately ninety-two (92) conversations to which Mr. Looker participated. (This only represents the conversations applicable to the instant indictment. There are hundreds more which involve three (3) other indictments wherein Mr. Looker is a defendant)

3. During these conversations, Mr. Looker makes numerous statements which are incriminating to him, however, none of these statements are incriminating to the defendant, Mr. Rogers.

4. Some of these statements have to do with destroying the FBI facility in Clarksburg, West Virginia. One of them clearly

states the terrorists to whom certain materials were being sold were more capable of destroying the building and doing it sooner than Mr. Looker.

5. There are so many statements of this nature made by Mr. Looker and the spill-over effect is so great that Mr. Rogers will not be able to obtain a fair trial.

6. Defendant asserts that limiting instructions to the jury will not erase the prejudice to Mr. Rogers that is created by Mr. Looker's statements.

7. The defendant intends to introduce evidence against Mr. Looker which would be 404(b) evidence. This evidence is that which is the subject matter of three (3) other Looker indictments and his co-defendants. This evidence is essential to Mr. Rogers' defense as he intends to prove that he did not agree with or Mr. Looker or anyone else to damage the FBI center in Clarksburg.

8. If the 404(b) material is introduced, Mr. Looker will be denied due process. However, if the admissible evidence is denied, Mr. Rogers will be denied due process.

9. The Government in its zeal to try the defendants together envisions a trial in which the actions and statements of Raymond Looker become indistinguishable from the actions of James Rogers. The Government is in fact delighted anytime when the defendant's in a joint trial have inconsistent or antagonizing defenses. In this case, they can not possibly introduce the facts supporting the other indictment into evidence against Mr. Looker. It is clear that to do so would be unfair, but they

urge the Court to deny severance so they can benefit from the introduction of the otherwise inadmissible evidence about Looker by Rogers.

10. The defendant submits that he would be prejudiced by a joint trial with Mr. Looker and that the prejudice as set forth meets the standards set forth in *Zafiro v. United States*, 506 U.S. 534 (1993).

WHEREFORE, Defendant requests that his Motion for Severance be granted.

Respectfully submitted,

Dated: 4-30-97



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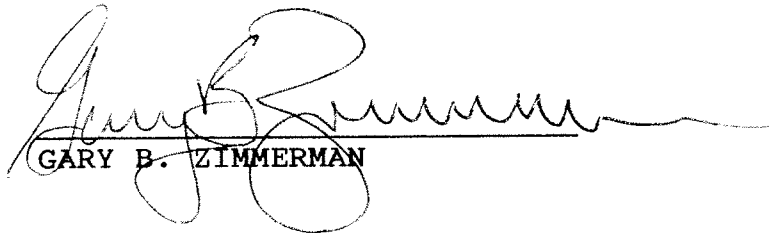
UNITED STATES OF AMERICA,	:	CRIMINAL ACTION
Plaintiff,	:	NO. 1:96CR43-01
	:	
v.	:	
	:	
JAMES R. ROGERS,	:	
Defendant.	:	

CERTIFICATE OF SERVICE

On this 30th day of April, 1997, I hereby certify
that a true and correct copy of the foregoing DEFENDANT'S
MEMORANDUM IN SUPPORT OF HIS MOTION FOR RELIEF FROM PREJUDICIAL
JOINDER was served by regular first class, United States mail,
upon the following counsel of record:

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